THE Grand-Jury-Man's OATH and OFFICE EXPLAINED: AND THE Rights of English-Men ASSERTED.

A DIALOGUE BETWEEN A Barrister at Law, AND A Grand-Jury-Man.

London, Printed for *Langley Curtis*, near *Fleet-Bridge* upon *Ludgate-Hill*. 1680.

THE Grand-Jury-Man's OATH and OFFICE EXPLAINED: AND THE Rights of English-Men ASSERTED.

Grand Jury-man. SIr! I am Summon'd to be one of the *Grand Inquest*, and I would willingly beg some Information from you touching the nature of that Service by Law.

Barrister. I shall readily gratifie so Just a Re-

 queſt,

queſt, being glad to hear you ſolicitous to *underſtand* fully your duty: For that ſhews your Reſolution to *perform* it Conſcientiouſly. Therefore to come to the matter.

By the Law of *England* no perſon (except in a *few* extraordinary Caſes needleſs to trouble you with) can be *Convicted* of any Crime, but there muſt firſt *two Juries* paſs upon him.

1. The *Grand Jury*, who Preſents the offence on the behalf of the King.

2. The *Petty Jury* [in Caſes Capital, call'd *the Jury of Life and Death*] who are to try the matter of ſuch Preſentment between the King and the Party accuſed.

The firſt of theſe is properly call'd, *The Grand* [or Great] *Jury* in a threefold reſpect.

1. For their *Number*, other Juries conſiſt but of 12 men; This of more, as 17, 19, 23, or the like.

2. For their *Quality*, becauſe they generally are and ought to be Perſons of more than ordinary Account, Eſtates, Underſtanding, *&c.*

3. For the *Extent of their Office* or Duty, being Jurors

Jurors for the King for the whole Body of that County for which they ſerve; And have power to Preſent all offences whatſoever committed therein, That are againſt the Kings Peace, Crown and Dignity.

Gr. Jury-man. Well then, The Grand Jury is the *Great Spring*, or *Primum Mobile* of the Court, that gives motion to all the other Wheels in Proſecutions Criminal, Their Preſentment being the *Key* that either opens or ſhuts the proceedings of the Court in every Offence.

Barr. You take it right, and therefore the Law provides, That they be *probi & legales Homines*, *good and lawful Men.*

1. Each of them muſt be *probus* (*quaſi probatus*) an *approved honeſt Man*, faithful and skilful.

2. He muſt be *Legalis* too, a *lawful Perſon*, that is not outlaw'd, of good Fame and Credit, No Alien, but a Leige-Subject of *England*; For the Free People of *England* by Law can only be Preſented and Tryed *per Pares* by their Equals and fellow-Subjects.

Gr. Jury-man. I perceive then the Law Repoſes a great Truſt in a Grand-Jury for the diſcovery of Offences, and that in their hands the Reputation and Peace of their Neighbours and fellow-ſubjects does much Conſiſt. Therefore to underſtand their Duty the better, I deſire you to recite unto me the Oath that is uſually Adminiſtred unto them.

Barr. Very opportunely thought on, I was Juſt coming to it; Here it is, read it your ſelf deliberately.

The Oath of a *Grand Juror.*

YOU ſhall diligently Inquire, and true Preſentment make of all ſuch things and matters as ſhall be given you in Charge, or ſhall come to your Knowledge concerning this preſent Service. The Kings Counſel, your Fellows, and your own, you ſhall well and truly keep ſecret. You ſhall Preſent nothing for Malice, or Evil Will that you bear to any Perſon; Neither ſhall you leave any thing Unpreſented for Love, Favour, Affection, Reward, or any hopes thereof. But in all things that ſhall Concern this preſent ſervice, you ſhall Preſent the Truth, the whole Truth, and nothing but the Truth, according to your beſt skill and knowledge; So help you God.

Gr. Jury-

Gr. Jury-man. But I would gladly hear the particulars of this Oath a little explained.

Barr. Obſerve then its ſeveral Branches.

1. *You ſhall diligently Inquire and true Preſentment make*; Hereby they are oblig'd to Enquire, and that diligently, not to be ſlothful, or negligent, not to take things upon Truſt, or hurry them over careleſsly; but to proceed on a mature and ſtrict Examination, and then to make true Preſentment.

2. *Of all ſuch things and matters as ſhall be given you in Charge, or ſhall come to your knowledge.* Here is laid down the Subject-matter of their Inquiry. By *Matters and Things*, muſt be underſtood, All offences againſt the Law by them Inquirable of, As Treaſons, Murders, Felonies, Perjuries, Forgeries, Miſdemeanours, *&c.* Which are commonly ſumm'd up to them in the Speech [or *Charge*] of the Judge. All and every ſuch offences which either they know of their *own knowledge*, or which ſhall appear to them by the *Teſtimonies* of others, they are to Preſent.

3. *The Kings Counſel, your Fellows, and your own, you ſhall well and truely keep ſecret.* By the Kings Counſel

ſel (I conceive) is to be underſtood, the *Evidence of Witneſſes* that ſhall be produced to them on the Kings behalf; This muſt not be Revealed or Diſcovered by the Grand Jurors, but kept ſecret from the Perſon concern'd, his Friends and all others, the Reaſon whereof ſeems to be this; Their Preſentment is but of the Nature of an *Accuſation*, or Charge. Now if they, having heard and Examined the Witneſſes ſhould divulge the Particulars, and wherein the Force of the Evidence lies; Then might the Party proſecuted (perhaps a Traitor, Murderer or Felon) take an opportunity to *Fly* from Juſtice; (For many times the Criminal is not apprehended, or is out upon *Bail* till after the Bill found by the Grand Inqueſt,) or at leaſt there might thereupon be ſome *Tampering* or Indirect Practiſes uſed to take off, or *Sweeten* the Evidence when it comes to be Tryed by the Petty Jury.

Nor are they to diſcover what any *one* or more amongſt themſelves have together Counſell'd, adviſed, or debated in the Buſineſs before them, Becauſe the ſame might *diſcourage* particular Members of ſuch Juries from giving freely their Opinions in diſcharge of their Conſciences, and render them liable to Malice, Reflections, *&c.* And therefore if

if a Jury be agreed, and the Court perhaps not pleaſed with their Verdict, ſhould take upon them to ask, *Which of the Jury-men were firſt or moſt earneſt for finding it thus or thus ?* I conceive the ſame and all other Inquiries of that kind to be utterly unlawful; That the Jurors are not bound by Law to anſwer thereunto, but oblig'd by their Oath to the contrary.

4. *You ſhall Preſent nothing for malice &c.* Having ſet forth what they are to doe, the Oath next preſcribes with what *Integrity* and Impartiality they are to do it, excluding all Malice and Revenge on the one hand, and all Favour and Affection on the other.

5. *But in all things you ſhall Preſent the Truth, the whole Truth, and nothing but the Truth.* The *Truth*; that is, Truth ſufficient to make a juſt Accuſation againſt a nocent Perſon. *The whole Truth*; not concealing wilfully any Crime that appears to them. *And nothing but the Truth*; That is, no known falſity, no falſe Accuſation againſt any Perſon muſt be Preſented, to bring an Innocent Perſon into diſgrace and Jeopardy, ſo as to force him to take a Tryal where it does not appear, That he hath committed any Crime, or where there is not any ſufficient Accuſation, or where the Fact charged

(If

(If in it ſelf Criminal) is yet not ſo fixt upon him by any probable Evidence, as deſervedly to expoſe him to a Tryal for it.

Grand-Jury-man. But ſince the Grand-Jurors are thus ſworn to preſent Truth, and nothing but the Truth; And yet Experience ſhows, That very frequently the Party proſecuted is really *not Guilty*, and ſo found by the Petty Jury, though the former have preſented the Indictment againſt him to be *Billa Vera*, a *True Bill*, I demand how theſe Oaths of the Two can conſiſt together, and with a ſafe Conſcience?

Barriſter. Though there may ſeem (*primâ facie* on firſt thoughts) ſome *Contradiction* between the two Verdicts, yet really there is none; But both may be true in their ſeveral proper *Reſpects*, and ſafely, that is, honeſtly given. I may (for certain weighty Reaſons and Proofs that I have conſidered) *verily believe*, That *A. B.* is Guilty of ſuch a Murder or Robbery, and therefore for the Execution of Juſtice (that Glory and Safety of a Kingdom) I may *ſwear* that I believe ſo, and judge it my Duty to Preſent him, That he may be Legally *Tryed* for ſuch Crime; And yet It may be poſſible that

that he is all this while *Innocent*, And perhaps when I come to hear his *Defence*, *I may think ſo too*; Yet have I not herein done him, or my own Conſcience any wrong.

The Grand Jurors work, I told you, is no more in its own Nature, than to Preſent Offences which they find *fit for a Tryal*. They hear only one ſide, *viz.* The witneſſes *againſt the Priſoner*, and do not, nay cannot, hear any thing in his *Defence*; Nor to Confront or weaken the Evidence brought againſt him, and ſo cannot be intended to give in more than a *veriſimilary* or *probable* Charge; which by what they have heard, they do aver upon their Oaths, does ſeem to them to be *Juſt and true*, and fit for Juſtice to take Cognizance of. And therefore by their Oath you ſee, they are oblig'd to make true Preſentments *concerning this preſent ſervice* [that is, according as the nature of their preſent Service in the Capacity of a Grand Jury requires] and alſo their Oath in the End is qualified, [*According to their beſt skill and knowledge*] which denotes not an abſolute Certainty, but ſo as things appear.

And for the ſame Reaſon it is, That in the Record, The Grand Juries finding a Bill is Entred *Juratores pro domino Rege præſentant*, *The Jurors for our*

Lord the King do PRESENT; [that is, Inform, Charge or by way of Accuſation on Juſt and Reaſonable Grounds urge and put to Anſwer] But the Verdict of the Petty Jury is Recorded thus, *Juratores dicunt*, The Jurors poſitively *SAY* or *Affirm*. And when afterwards on Tryal any man is Acquitted or Convicted, The Record runs thus, The Jurors ſay, That *A. B.* is Guilty [or not Guilty] of the Felony aforeſaid in the Indictment aforeſaid ſpecified, which *Ei ſuperius imponitur*, is above *laid or Charg'd* upon him in manner and form as by the Indictment aforeſaid, *ſuperius verſus eum ſupponitur*, *Is above againſt him ſuppoſed*. So that you ſee here, the Law it ſelf Conſtrues the Bill found by the Grand Jury to be only a laying on, or probable Charging of a Crime, and ſpeaks of it but as a ſuppoſition; ſo that by *Billa vera*, can only be underſtood a Bill that appears to have Truth in it, neceſſary to be tryed, and fit for the Enquiry of another Jury; The Adjective, *Vera*, in this place not ſo ſtrictly ſignifying *True*, as *meet*, fit, or reaſonable; And ſo 'tis uſed ſometimes by Authors, as *verum eſt* in *Terence*, which Grammarians render, *it is fit*, or you *ſpeak Reaſon*.

And therefore on the other ſide, they never endorſe upon thoſe Bills they do not find [*Billa Falſa*

Falſa, that is, a falſe Bill,] but modeſtly write, *Ignoramus*, which ſignifies, They are Ignorant of the matter in the Bill, and that they find *no Cauſe* either from what they have heard from the Witneſſes, or know of their own knowledge to Commend it to a further Inquiry, or to put the party on any Tryal.

Grand Jury-man. If this be all, it ſeems Grand Jurors need not much ſcruple the finding of moſt Bills brought before them.

Barriſter. Not too faſt, you have heard by their Oath they are *diligently to Inquire*; And theſe words, *Truth and nothing but the Truth*, have great weight and Obligation. They muſt therefore have ſome knowledge or good probable proof on Oath, on which they verily believe the matter *deſerving Tryal*, and the Party *Guilty*, or elſe they cannot in Conſcience Endorſe a *Billa vera*. For if they ſhould do it without ſuch juſt and lawful Inducements, they apparently violate their Oath, and withall are highly Guilty of Injuſtice towards their Neighbour in preferring a *cauſeleſs Accuſation* againſt him, whereby his Credit is impaired, his Life Liberty or Eſtate expoſed unneceſſarily to the *hazard*, trou-

ble, and charge of a Tryal, &c. Wherein if by any Ill practice with, or the Ignorance of the *Petty Jury*, he ſhould be *Convicted* (when Innocent) though ſuch Petty Jury would be moſt Immediately concern'd, yet the Grand Jurors too cannot be Excuſed from a *ſad ſhare* in the Guilt of the *Blood*, or Ruine of ſuch an Innocent Perſon and his Family; For, *Qui non prohibet cum poteſt, jubet*, *He that doth not hinder Injuſtice when it lies in his Power, Commits it*; And it was by reaſon of their inconſiderate groundleſs Preſentment, and finding *Billa vera* where they had no Juſt Cauſe ſo to do, that occaſion'd the miſchief; For without *That*, it could never have happen'd.

Grand-Jury-man. You have very well ſatisfied me in theſe Particulars; But ſuppoſe a Bill ſhould be brought before the Grand-Jury, wherein a man is accuſed for doing *ſome Act that is* in it ſelf no Crime; Only in the Indictment it is called *Treaſon*, *Sedition*, or *Miſdemeanor*, and ſaid to be done *falſly and maliciouſly*, with an Intent to raiſe Sedition, bring the Government into Contempt, &c. Now if it happen that the particular and *Naked Fact be proved*, But that the ſame is Treaſon, Sedition or Miſdemeanour is not declared by any Law, nor yet

yet does it appear by any proof that it was done with any ſuch *ill mind*, or *criminal Intention*, what muſt the Grand Jury do in this Caſe?

Barriſter. If the matter charg'd be (as you put it) no Crime in it ſelf by Law, then though it be never ſo much branded with ſuch aggravating terms, yet ſince the ſame do in no kind appear to the Jury to be deſerved, they muſt undoubtedly retorn an *Ignoramus*; For you have heard, That their work and the main Scope of their Oath, is to Preſent ſuch matters as appear to them *fit for Juſtice to take Cognizance of*; But where they are ſatisfied, that there is no ſuch Crime, if they ſhould Endorſe a *Billa vera*, and ſo put a perſon, whom in their Conſciences they think Innocent, (becauſe nothing appears to them to the contrary,) to the hazard, charge and trouble of a Tryal, It were a plain violation of their Oath, and unjuſt as aforeſaid.

Grand-Jury-man. But this were for them to take upon themſelves the *knowledge of the Law*; Now I have heard people ſay, Juries are only to Judge *of matter of Fact.*

Barriſter. Jurors are to conſider *both Law and Fact*, or

or elſe they will never deliver juſt and lawful Verdicts. To what purpoſe does the Law provide, that Jurors ſhould be ſo well qualified as to Eſtate, Underſtanding, and Sufficiency; And ſo ſtrictly ſworn, but only to detect Offenders, and preſerve the Innocent from needleſs vexation and trouble? How far Juries are Judges of Law as well as of Fact, is pretty well ſet forth in a ſmall Treatiſe lately publiſht, Intituled, *The Engliſhmans Right*, To which (as well worth every true Engliſhmans Reading) I refer you for further Information. Only to ſatisfie you at preſent, I ſhall deſire you but to conſider of the ſad Conſequences that would follow, this conceit, That Juries muſt neceſſarily find every Indictment where the bare matter of Fact (be it what it will) is proved, without Inquiring into, and weighing the Nature of that Fact, or retorning *Ignoramus* where they find the ſame, *Not Criminal.*

Suppoſe a Bill were exhibited againſt *A. B.* for *Treaſon*, for looking on the *Tombs at Weſtminſter*, or of high *Miſdemeanour* for *taking a Pipe of Tobacco, falſly wickedly and maliciouſly, with an Intent to Infect the Air, and deſtroy his Majeſties Leige-Subjects with pernicious Vapors*; And it were very fully prov'd, *That he indeed lookt upon the Royal Tombs*, or did *whiff the Pipe*;

Pipe; but nothing of any ſuch deſign of *Poyſoning* the People thereby, appears in Proof; Now would you, or any Grand-Jury-man that wears five Senſes and *a Soul* about him, return a *Billa vera* on theſe Indictments? And yet here the matter of Fact is prov'd, and by theſe mens unreaſonable Reaſonings you ſhould be bound to find it.

Again, Imagine an Indictment brought againſt a Perſon ſetting forth, *That he falſly and maliciouſly and with an Intent to create and foment Rebellion, Sedition, Diviſions and Diſtractions amongſt the People of England, did cauſe to be printed and Publiſhed in the Engliſh Tongue, a certain Book called, The BIBLE*; And it be proved by an Hundred and Fifty Witneſſes, that he did indeed Print and publiſh the *Holy Book*, yet would not you rather have your hand Rot off, than with it to Subſcribe *Billa vera* here? But if this opinion were true, you ſhould be bound to do it, or elſe be Clamour'd and Hector'd at, as if you were Guilty of the blackeſt Perjury.

Nor is this any Extravagant Suppoſal, If (which God forbid) *Popery* ſhould prevail amongſt us; For 'tis not above 150 years ſince, a poor honeſt *Bookſeller* was burnt to death at *Avignion* in *France*, for no other Crime but ſelling *Bibles* in *French*; and to denote his Crime, two Bibles were fixt about his Neck,

and

and burnt with him, [See *Foxes* Acts and Monuments, fol. 861.] And here in *England* K.H. the 8*th*, on the 8*th* of *July* 1546. Iſſued a Proclamation requiring all *Engliſh* New Teſtaments to be brought in by ſuch a day to the Conſtables in every Precinct, and ſo to the Sheriff to be *Burnt*; And that if after ſuch day, any Perſon ſhould be found to have any ſuch Teſtament, or any part thereof in his Cuſtody, he ſhould not only ſuffer *Impriſonment* and puniſhment of his body at the Kings Will and Pleaſure, but alſo be *Fined* at the diſcretion of any 4 of his Majeſties Council.

Grand-Jury-man. God defend us from ſuch times. But I pray let us return to our Diſcourſe; I have obſerv'd, That in Indictments, Informations, *&c.* There are certain words uſed which are ſeldom proved; As *Vi & Armis, Contra pacem, falſè, malitioſè, &c. With Force and Arms againſt the Peace, falſly, maliciouſly, and the like*; Pray therefore Inform me, Is it a ſufficient Cauſe not to find a Bill, If the Jury have not Proof of Theſe?

Barriſter. Here lies the *Knot*, the pinch of the Buſineſs, which rightly underſtood, would ſilence this Controverſie for ever. You muſt note therefore,

fore, that ſometimes theſe words are only *of Courſe*, or *matter of Form*, raiſ'd by a Juſt and reaſonable Implication of Law; but ſometimes they may be thruſt in to raiſe a pretence or colour of *Crime*, where there is really none.

The *Diſtinction* therefore to be obſerv'd, is this; Where the Act, or matter of Fact charged, is in it ſelf *a Crime* or offence againſt Law, there the Law does neceſſarily in Pleadings require and Imply thoſe words; and If the Jury do find and are ſatisfied, That the ſubſtance of the Charge is ſuch a Crime, and the Perſon guilty thereof, They are bound *to find it*, though no direct proof be made of thoſe *Circumſtantials*.

But where the Act, or matter of Fact is in it ſelf *Innocent* or Indifferent, there the purport of theſe words is neceſſarily to be proved, for elſe there is *no Crime*, and conſequently no fit matter to be put to a Tryal; In which Caſe the Grand Jury is bound in Conſcience and Law to retorn an *Ignoramus*; and a Petty Jury, *Not Guilty*.

For though ſome Gentlemen of the long Robe are pleas'd to call theſe words only, *Pepper and Vinegar*, harmleſs ſawce; yet if meerly for them, a Jury ſhould pronounce a *Billa vera* or *a Guilty*, where the *main diſh* is good and *wholſome*, they

would become *rank poyſon*, and deſtroy all the Vital Liberties of the Nation.

Gr. Jury-man. What then may be the deſign, That yet ſome People plead a Neceſſity of the Juries finding *all Bills*, however worded or aggravated, where the *matter of Fact* (as they call it) is proved?

Barriſter. I do not care whether there be *any ſuch* People, or any ſuch *deſign*. But this I know, That in the *11th* year of K. *Henry* the *7th* there was an *Act of Parliament* obtain'd on very ſpecious Pretences, That Juſtices of Aſſize, and of the Peace ſhould have full Power or Information for the King, *without any Preſentment of a Grand Jury, or Tryal by a Petty Jury*, To hear and determine at their *Diſcretion*, all offences &c. *By pretext of which Law* (ſaith the Learned Lord *Cook*, 4 part *Inſtitutes*, fol. 41.) *Empſon and Dudley* (Two Judges, or Juſtices, for the latter is the Legal Title) *and their followers, did commit upon the Subject unſufferable Preſſures and Oppreſſions. And thereby brought infinite Treaſures to the Kings Coffers, whereof the King himſelf* (ſaith the ſame Reverend Author) *in the end repented with great Grief and Compunction*; And the Statute was repealed,

and

and the ſaid *Falſe Juſtices*, notwithſtanding ſuch their pretended Authority, (even of an Act of Parliament, yet the ſame being againſt *Magna Charta* and the Fundamental Laws of the Land) were both fairly *Beheaded*, and no leſs than *Seven* of their little Inſtruments, Promoters, Informers, or what you pleaſe to call them, *viz. Canby*, *Page*, *Smith*, *Derby*, *Wight*, *Sympſon* and *Stockton*, were ſet on the *Pillory*, and afterwards ordered to ride through *London*-Streets with their *Faces towards the Horſe Tail.* With the ſame whereof *the Rogues* within 7 days after all dyed in Newgate. See *Baker's* Chronicle, fol. 254.

Now if there ſhould be any ſuch Deſign as you talk of, (which I neither know, nor can beleive) It muſt be to do the *ſame thing* in Effect *by Colour of the Common-Law*, which theſe Villains *Empſon and Dudley* did by Pretence of a *Statute-Law*; For what real *Difference* is there between getting an Information or Indictment drawn by order of certain Juſtices againſt a Perſon, and Condemning and Fining him at their pleaſure *without any Jury* at all, (which was the *Empſon* and *Dudley*-way.) And cauſing and Indictment or Information ſtuff'd with *hideous terms* on an *innocent* indifferent matter of Fact, to be Preſented to two Juries ſucceſſively;

but *withall telling them*, they are bound not to conſider whether ſuch matter of Fact be indeed *any Legal Crime*, And ſo *Trepanning* (for I can call it no better, whether it be done by *Wheadling* or *Menacing* and huffing,) the ſaid Juries, to find the Party *Guilty*; When in their own Conſciences they do not believe he has committed any ſuch Crime. And then ſhall come the ſaid Juſtices, and upon ſuch his Conviction, Sentence him to be *Hang'd*, or to *ſtand in the Pillory*, or be *Fined* ſo many Hundred Pounds (much more perhaps than the poor Creature is worth; ſo that it amounts to an Impriſonment from which only *Death* can Bail him:) And all this for that which is no *real Breach* of any Law either of God or his Native Countrey.

Grand-Jury-man. This indeed were the groſſeſt Injuſtice, the moſt horrid ſcandal that would be caſt on the *Laws of England*, which have been ever Celebrated for the moſt Equal, Juſt, and Merciful in the World; and ſo much worſe than the Practice of *Empſon* and *Dudley*, becauſe by this means, *Jurries* would be made uſe of as *Stales* and *Properties* of oppreſſion. But it is not to be *ſuppoſed*, That any Juſtices ſhould offer, or ſuffer any ſuch Indictments or Informations to be offered, to any Juries,

or

or attempt to perſwade Juries to find them, where the matter thereof is not *warranted by Law*.

Barriſter. I know not what you can ſuppoſe, nor do I complain, That any ſuch thing *has been attempted*, much leſs do I ſpeak to diſcourage any *Juſt Proſecutions* of real Crimes and Miſdemeanors; But I muſt tell you, That there are very wiſe men that *ſuppoſe* ſuch things as we have been talking of, may poſſibly fall out, at leaſt in *another Age*; For we are not Aſſured, That in all Generations there ſhall never be any *Ill men* put into Office; There may one day perhaps happen a little peeviſh Juſtice, or a *Bluſtring* Magiſtrate in ſome Village or other, that may be *no mighty Witch* at Law, and ſo ignorantly may promote *odd Fantaſtick* Indictments; or may be a *Creature of Ambition*, and ſo willing to ſerve a Turn for *Preferment*, and may Endeavour to *Hector Juries* out of their *Rights* and their *Wits*, or a thouſand other Accidents. And therefore why ſhould it be left upon a fallible ſuppoſal, a meer *Hap-hazard*, or why muſt Ill Precedents be given? The Inſtitution and very End of Juries is to preſerve *our Liberties* from the wily Encroachments of oppreſſion; And therefore 'tis the Right and Priviledge; nay I will add, 'tis the indiſpenſable *Duty*

of

of *Grand* and other *Juries*, to Act like men of Judgment, Conſcience and Courage in ſuch Caſes. For otherwiſe they *Forſwear* themſelves, grievouſly injure their Fellow-Subjects, betray the Freedomes of their Countrey, and open *a Gapp* for Slavery even in *that very Hedge*, which was purpoſely firſt *planted*, and has time out of mind been ſo carefully preſerved by our Anceſtors, to keep it out.

Grand Jury-man. Well, but if Juries do not give their Verdicts as the Court think fit, though the Jurors proceed uprightly according to the beſt of their Underſtanding and Conſciences, yet may not the Court *Fine* or *Impriſon* them.

Barriſter. No. The Law utterly Condemns any ſuch Practice, as you may ſee undeniably proved in the before mentioned Treatiſe, call'd, *The Engliſh man's Right*, p. 24. Nay, if any ſhould preſume to *Menace* or *Reproach* a Jury for giving their Verdict uprightly according to their Couſciences, It would be an High *Miſdemeanor*; and ſuch Inſolence ought to be Corrected with *Exemplary* puniſhment.

Grand Jury-man. Since Juries are ſo eſſential to our *Engliſh* Liberties, and of ſo *great Uſe* to the Nation,

tion, Is it not great Pitty, That men beſt qualify'd both for *Eſtates* and *Underſtandings* for that Service, ſhould oft-times uſe little under-hand Practiſes or ſmall Bribes to the *Officer* that Summons them, to avoid it.

Barr. 'Tis both a pitty and *a ſhame* if any ſuch thing be done, and ought likewiſe to be puniſhed; For thereby Perſons every way *unfit* may at laſt come to ſerve turn, and ſo Verdicts may become *Mercinary*, and People ſet up to *make a Trade* of being Jury-men; Whereas 'tis an Office that the *beſt Commoner* in *England*, is neither too good nor too *great* to ſerve his King and Countrey in; Which I wiſh all *Gentlemen* would Conſider, and readily diſpoſe themſelves to accept the ſame, when ever they ſhall legally be call'd unto it.

Gr. Jury-man. I thank you, Sir heartily for the Information and good Advice you have given me in this matter, and ſhall Endeavour to diſcharge my Duty accordingly, As becomes a Chriſtian, *a Loyal Subject*, and an upright *Proteſtant Engliſhman.*

FINIS.

Mr. Read's CASE:

Publiſhed for Prevention of **Scandal** to his

Brethren & People,

For Encouragement to Suffering

Proteſtant Diſſenters,

For a Rebuke to their

Lawleſs Adverſaryes:

BEING

A Leading-Caſe how to deal with Such Men; And a Practical Anſwer to Dr. *Stilling fleet*, and others, who Object againſt the Non-conformiſts. *Why will you not do what you Confeſs to be Lawful?*

Humbly preſented to Our **Governours**, in hopes of their Forbearance towards Us, in ſuch things as we Account *Sinful.*

LONDON, Printed for *Richard Janeway*, 1682.

Mr. Brodie's

A Q H

Business People

Practical Dilettante

Business Advertising

Mr. Read's Case.

THe general Mistake of People concerning *Conformity* and *Nonconformity*, and the mischievous consequence thereof, especially in regard to my own Case, doth necessitate me to give the world some account of it, that I may thereby endeavour to cure the *Prejudice*, and remove the *Stumblingblocks* that at present lie in their way: And the late rigorous execution of the penal Statutes upon *Dissenters*, contrary to the last Vote of the *House of Commons* at *Westminster*, hath put me upon many serious thoughts of heart, what may be done at such a time as this, to oppose the *Popish* design of introducing *Popery*, and invading of our *Property*.

As the destroying of *Religion* and *Property* is their End; so the reproaching, impoverishing, imprisoning, and ruining of *Protestants* by railing Pamphlets, forging of Lies, suborning of Witnesses, incouraging mercenary Informers, presenting to Bishops Courts, Excommunicating, &c. are the *Means* for the attaining of these Ends.

But if People did consider, that as *Dividing* and *Destroying* is the work of *Papists*; so *Uniting* and *Healing* of breaches is *OUR* work, and would act accordingly in their several places, *THIS* would prevent our Popish adversaries in their Designes against us. Let us do what we can without Sin in *Obedience* to *Authority*, and then when it comes to the Tryal, that we must either *Sin* or *Suffer*, it will be a great comfort to us, when we can truly say, that we have chosen to *Suffer*, rather than to *Sin*.

But if there be no *Sin* in the case, we must not expose our selves or people to sufferings *Causlesly*. We cannot *suffer joyfully the spoiling our Goods*, the confinement of our *Persons*, or the ruine of our *Families*; unless *Conscience* be able truly to say, I would have done any thing but Sin against *GOD*, that I might have avoided these Sufferings from men.

It was the saying of a Reverend Minister Mr. *J. B.* of *Worcester*, when he lay upon his Death-bed, and was asked what thoughts he had of his Nonconformity? *I would have done any thing but Sin*, saith he, *that I might have continued in the exercise of my Ministery: but when it came to that, there was no remedy.*

This Minister read the *Common-Prayer* in his Church, when the KING desired that the Ministers

sters would read so much of it as they were satisfied in their consciences was lawful to be read, and a while after (on *Bartholomew* day, 1662.) turned out with the rest of his Brethren.

Many more read the *Common Prayer* before, and yet proved Nonconformists after; and if *that* had been all that had been required of the Nonconformists, to read the *Ordinary Lords-dayes-Service* according to the Liturgy & Practice of the Church of *England*, the most of the Nonconformists had continued in the exercise of their Ministry in Publick as well as others.

Whereas therefore the Ignorant among us know not what *Conformity* or *Nonconformity* is, but account it offensive, if a Minister read the *Common-Prayer*, or go to the Publick Church, and joyn with those that do read it, and are ready to refuse Communion with those *Ministers* or *Churches* who use it: 'tis high time to rectifie this mistake, & teach them better; lest by silence in these matters, the People run into the sin of *Schism* indeed. Not only to separate from those in the publick Churches, but from their own Pastors, when once they reduce their Principles into Practice, by reading so much of the *Service* as they approve of, and will satisfie the Law.

I ſhall therefore deſire All to take notice of three Laws made within theſe Twenty Years paſt, which the Nonconformiſts are ſufferers by.

The firſt is the *Act* of *Uniformity*, requiring not only the Reading of the *Common-Prayer* (which in the *Ordinary Service* I believe moſt of us do account lawful) but it requires alſo, that openly and publickly we declare before the Congregation, *Our unfeigned aſſent and conſent to all and every thing contained and preſcribed in and by the Book of* Common-Prayer, *and Adminiſtration of Sacraments, and other rites and ceremonies of the Church, according to the uſe of the Church of* England, *together with the Pſalter, and the Form or Manner of Making, Ordaining, and Conſecrating of Biſhops, Prieſts, and Deacons.* And in the ſame *Act* it is required, that we Declare and Subſcribe, that we *will Conform to the Liturgy of the* Church *of* England, *as it is now by Law Eſtabliſhed*, beſides what concerns the *Renouncing* of the *Covenant*, and *Re-ordination.*

There is a great deal of difference (let us note here) between *All* and *Some*; between *Reading* the *ordinary Lords-Days-Service*, and *Approving* the Book, and *all that is in it.* Mr. *Baxter* in his *Plea for Peace*, gives no leſs than Thirty particular Inſtances of ſeveral things in the Common-Prayer Book, which

which the *Non-conformists* cannot declare their Aſſent and Conſent unto. Such as will be at the pains to read them, may thereby underſtand that we are far from a full Conformity *Throughout*, notwithſtanding the Cenſures & Reproaches of ſome againſt us as too Conformable, becauſe we declare by our Principles, and Practices, that we can lawfully not only *Hear* Common-Prayer, but *Read* it our ſelves: And yet though we cannot Conform to the *Law* by doing all it commands, we have manifeſted by our Peaceable Submiſſion, that we can patiently ſuffer the Penalty it inflicts, *viz.* The caſting us out of our Livings, and rendring us incapable of Church-Preferments for the time to come, with other Penalties there mentioned) until the King and Parliament ſhall ſee cauſe to relieve us.

Moſt of the Non-conforming Miniſters who can with a good Conſcience read Common-Prayer, and thereby ſecure themſelves from the Penalty of the Conventicle-Act, cannot declare their *unfeigned Aſſent and Conſent to the Book and all that is in it*, if they might have the greateſt Preferments of Hundreds or Thouſands *Per annum* for their pains.

Another Law againſt *Non-Conformiſts* is *that* made at *Oxford*, (by ſome called the *Five miles Act*) for *reſtraining Non-Conformiſts from Inhabiting in Cor-*

po-

porations: the penalty whereof is six months Imprisonment, unless upon or before such Commitments, such Offenders shall before the Justices of the Peace, Swear and Subscribe this Oath following: I A. B. *do swear, that it is not lawful upon any pretence whatsoever to take Arms against the King; And that I do abhor that traiterous Position of taking Arms by his Authority against his Person, or against those that are Commissionated by him in pursuance of such Commissions: And I will not at any time endeavour any alteration of Government in Church or State.*

Many of the *Non-Conformists* have taken this *Oath*, being satisfied in the sense which all Lawyers that have discoursed do give of it, *viz.* that by *Commissionated by him*, we are to understand *Legally Commissionated*; and by *Endeavouring any alteration of Government* we are to understand it thus, that *I will not endeavour it by any Seditious way, or Unlawful means.*

In *this* sense I offered the *Judges* in open Court to take it (having before made the like offer to the *Justices*), but being tied up to the *Words* of the *Oath*, and not having then advised with Lawyers and others about the Sense, as since I have done, I did therefore refuse to take it, and suffered six months Imprisonment upon that account.

But being better satisfied about these things by

a Paper called *The Sheriffs Case*, printed 1680. and again reprinted 1681: And being further satisfied of the true sense of this Oath, by Mr. *Corbets* account of the *Non-conformists Principles and Practices* p. 11, 14. and other writings of his not yet published: And especially being fully satisfied of the lawfulness of taking the said Oath, by particular Advice from *Council* learned in the Law, who better understand the meaning of Laws than we *Ministers* do, who have told me, that an *Illegal Commission* in law-sense is *no Commission*; and that the Parliament cannot be understood to prohibit *Legal endeavors* to make *any alteration of Government*, but only such as are *Illegal* (for if so they should by their practice contradict themselves in the many endeavors that since they have made in a legal way): And lastly, having received Instructions from the forementioned *Sheriffs Case*, how to declare our Sense of the said Oath, before, or at the time of taking it, in as publick a manner as we take it, that hereby we may avoid giving of scandal to others: And also being incouraged herein by Mr. *Baxters* words in the life of Mr. *Ashurst* (quoted also in the said *Sheriffs Case* printed 81.) owning those as *worthy* Men who did what he refused (speaking of *all* in the Corporation Act,

which is much more to be ſcrupled than this *Oath alone*) ſuppoſing that *they in words or writing declared as openly as they ſwear, that they take it in ſuch or ſuch a lawful Senſe*, p. 48: I ſay, upon theſe ſeveral Conſiderations I can *Now* with as good a Conſcience *take* the ſaid *Oath*, as formerly I did *refuſe* it. And therefore in the ſenſe as afore explained, and no other, (Delivering hereby my own *Soul*) I ſhall be ready, when call'd thereto by the Magiſtrate, to take the ſame in the words of the Act..

A Third Law made againſt Non-conformiſts is the *Conventicle Act*, made to *prevent and ſuppreſs Seditious Conventicles*: By the rigorous execution whereof, the *People* as well as the *Miniſters* have bin great ſufferers, though never any thing of *Sedition* could be *Charged*, much leſs *proved* againſt *Me*, or my *Brethren* that I can hear of.

Whether our many and great troubles upon this account are not *ſelf-made* Troubles, or long of our ſelves, hath many times been diſquieting to my mind.

About four or five years paſt, when the Informers & Officers were very troubleſome to us, and had taken away the Goods of ſome of the Congregation, I told my People at a Meeting of two

or three Hundred of them, that I ſaw how unable they were to bear ſuch Troubles and Loſſes, and that I could not be faithful to them, or to my own Conſcience, without telling them, that though I were not *fond* of the Common-Prayer, having never read it in my life, yet it was my judgment, and moſt of our Miniſters, that it was lawful to read it; and that by the reading of it they might be free from the penalty of this Law for the time to come, and therefore if they met with further troubles for want of reading it, they ſhould blame themſelves, and not me.

Some few were ſo weak, that for ſpeaking thoſe words, they never came within the Meeting-Place ſince that I can hear of: Some more (twenty or there about) were ſo much prejudiced againſt the uſing a Form of Prayer, that I found there was danger of making a breach amongſt us; and that a new-gathered Congregation could not bear ſo great a ſhaking, till they were a little better ſetled. I did therefore for the ſake of *thoſe few*, forbear to uſe it, contenting my ſelf only, with reading the Scriptures, the Creed, Commandments, and the uſe of the Lords-Prayer.

And now at laſt, having firſt adviſed with my *Brethren* in the Miniſtry, who acknowledge the lawfulneſs of uſing of the Liturgy in the *Ordinary-Lords-Days-Service*, and with *Lawyers*, who tell me, that the reading of it will prove the *Lawfulneſs* of our *Meeting*, and ſecure

us from any further trouble: I have therefore begun to read it, and upon proof thereof, by several Witnesses to the Grand Jury at *Westminster* this last Term, I brought in a Bill of Indictment against Justice *Parry*, *Richard Toovey* Distiller, *John Pollard* in *Parkers* Lane Informer, and several others for a Ryot, in breaking open the doors of my *Meeting-Place*, when our *Worship* was not *in other manner than according to the Liturgy and Practice of the Church of England*; And another Bill of Indictment for a Ryot against the said Justice *Parry*, *Thomas Harris* Cheesemonger, *John Pollard*, *Stephen Leucas* the *Smith*, and others, for breaking open the door of my dwelling-House the Lords day before, where there was nothing of any *Worship* or *Company* to ground any pretence of an *Unlawful Meeting* upon.

The said Jury have found both the Bills, and in due time I shall make further trial of this point at Common Law, whether *They* or *I* are the transgressors of it.

I am sensible that these things make a great noise, and the mouths of many are opened against me. The railings and threatnings of prophane Drunken *Damme's* I matter not: I do not Arrest them and Indict them, for doing *their Office*, as they are the Kings Officers, but for doing *more than their Office*: If they have done well, they shall have praise

for

for the ſame. Poſſibly they may have the repeated thanks of a *Middleſex* Court of Juſtices: But we know that no Law is made *for a Righteous Man*, but for the *Lawleſs and Diſobedient*; *for the Ungodly, and for Sinners*; *for the unholy and prophane*; *For Murderers of Fathers, and Murderers of Mothers*; *for Manſlayers, for Whoremongers*; I may add, for Houſe-breakers, and Sabbath-breakers; for Prophane Swearers and Drunkards; for idle prodigal ſpend-thrifts that care not to pay their debts. Such perſons as theſe, may find ſome others perhaps as Zealous for the execution of the KING'S Laws as themſelves, and Time will diſcover who are the KING'S beſt Subjects.

But there is another ſort, whom I am concerned to give all due ſatisfaction to; that is, to my *Brethren* the *Miniſters*, who are not under the like circumſtances with me, and therefore may not think fit to do what I have done; and to my *People* among whom I have laboured near ſeven Years, not without good encouragement and ſucceſs, and therefore I am very tender leſt I ſhould juſtly offend the one or the other. If there be any one then that ſhaketh the head, and ſaith, *I wonder that* Mr. Read *ſhould read the Common-Prayer?* I anſwer, which of you convinceth me of Sin? *If I have done Iniquity, I will do ſo no more*; or *If I have done evil*, (in reading the Liturgy)

turgy) *bear witness of the evil*; but if well, why *judgest thou thy Brother?*

I confess my *Practice*, is yet *Singular*, and perhaps the first publick instance of this nature in *England*, so far as I can understand: But the *Principles* on which it is grounded, are undeniable, and far from the imputation of Singularity. Yea, and the Practice too of using a Publick *Liturgy*, or form of *Prayer* in Publick assemblyes for the Worship of God, is of such universal extent, that there are few Churches in the World without it, so far as I can understand.

The principles I go upon are such as these, *viz.* That obedience to the Magistrate in things lawful, is a duty. That a form of *Prayer* is Lawful. That it is the Pastors work upon good advice, to judg of the expediency of useing such a form of Prayer, by the general rules of *doing all to the Glory of God*, edification of his People, and the publick good. That Communion with such Churches who use a form of Prayer is lawful also, supposing they do not make any thing that is *Sinful* the *Terms* of their Communion.

Whether these Principles are not ackowledged as sound by the Brethren of all perswasions, and whether my practice be not agreeable to these Principles, I submit to the Judgment of others.

Mr. *Nye*, a leading Man among our Brethren the *Independents*, hath proved it lawful to hear a Parish Minister

ſter; And Mr. *Tombs*, as eminent among the *Anabaptiſts*, wrote a Book to prove it lawful both to hear and communicate with them; And his Practice at *Salisbury* was conformable thereto. Many of our Brethren hereabout *London* go to the Pariſh Churches, and hear *Common-Prayer* there, and ſome of them communicate with them ſometimes. The *Non-Conformiſts* both *Miniſters* and *People* in many places, through the Land go to their Pariſh Churches, and maintain Peace and Love by occaſional Communion with them.

Many of our Brethren did read the *Common-Prayer*, before they turned out of their Livings as I before noted; and would they not be glad to read it again, if thereby they might have the exerciſe of their Miniſtry, and their Maintenance reſtored? And if upon theſe terms they could read it at the *Church* (ſuppoſe at St. *Giles*'s) then why may not I read it in the *Chappel* (here at *Bloomsbury*)? If I may Judg of the *Non-Conformiſts* in other Countryes by thoſe in *Worceſterſhire* where I lived, I do verily believe there is not one in ten, but would be thankful to *GOD* and Man, if they might be reſtored to their Livings by doing only what I have done. *Therefore thou art inexcuſable O Man, whoever thou art that Judgeſt thy Brother*: For that which thou judgeſt lawful to be done by another, thou forbeareſt thy ſelf: and becauſe thou forbeareſt doing it thy ſelf,

thou

thou condemneſt him. I will repeat this word only to my Bretheren, If there be *Sin* in the *Caſe*, I ſhall chooſe to *Suffer* rather than *Sin*, as ſoon as I am convinced of it.

As for ſatisfaction to the Scrupulous and well-meaning Chriſtians among us, whoſe minds are ſo much prejudiced againſt the *Publick* Miniſtry, and the *Way* of their *Worſhip*, and therefore will not bear the uſe of the *Liturgy* of the Church in the Unexceptionable part of the ordinary Service, but cry out againſt it as *Will-Worſhip*, *Antichriſtian*, *Idolatry* and the like, *I* ſhall in *General* only ſay thus much. If they will go to the Miniſters of *Chriſt* as *little Children*, that is, as *humble learners*, willing to be taught; and by converſe with them, and other underſtanding Chriſtians, as alſo by ſearching into the *Scriptures*, and reading of good Books, will endeavour the *Cure*, or at leaſtwiſe the *Abating*, of their Prejudice; I doubt not but we ſhall quickly be more like-minded in theſe things. And if then they will lay aſide Animoſities, and be ſo humble as to think ſoberly of themſelves, and weigh the Judgment of thoſe with whom they Conſult, who better underſtand theſe things than they, it's like they will be more ready to Judg, or be Aſhamed, of themſelves, than to Cenſure me, and ſuch as joyn with me.

In

In particular, next I muſt refer them to ſuch Godly, Learned, Judicious, and peaceable Authors, as theſe hereafter mentioned, *viz.* Mr. *Nye*, Dr. *Owen*, Mr. *Ball*, Mr. *Baxter*, and Mr. *Corbett*, ſuppoſing they will be ſatisfied by what they have Publiſhed, when they will not by any thing I can ſay or write on this Subject.

Mr. *Ney*, in his Caſe conſidered, *Whether we may lawfully hear the now Conforming Miniſters, who are Re-ordain'd, and have renounced the Covenant, and ſome of them ſuppoſed to be ſcandalous in their lives?* anſwers affirmatively, *pag.* 4. That *it is a Duty that we and our Families frequent (as we have liberty and opportunity) the more publick and national Miniſtry*, and gives us this as one Reaſon, pag. 5. *As we are Members of Churches, ſo we are Subjects and Members of this Common-wealth, and are obliged thereby to obſerve*

the lawful Commands of our Governours, and to be Examples therein to others.

'And again, p. 6. If Church Members, or a-'ny one Godly Man, hath a Warrant to for-'bear hearing such Ministers upon this ac-'count of unlawfulness, then all Godly Men 'ought at all times so to do; and if so, the 'Examples of the Godly to the generality 'being very leading in the Matters of God, 'this Ordinance thereby will be little fre-'quented, and of less Efficacy to those that 'do come to it; and by asserting it unlaw-'ful to hear such Ministers, we imply it were 'better for the Nation, there were no Preach-'ing but in particular Churches; and if so, 'what can we expect will become of ma-'ny thousands, in an ordinary way of Salva-'tion, that have no benefit at all by our 'Church-instructions? We are to walk wise-'ly, yea mercifully towards them that are 'without.

And

And towards the concluſion, p. 24. he tells us, That *this is one of the miſperſwaſions of theſe latter Times, by which Mens Minds have been corrupted, that it is unlawful to hear in Publick, which I am perſwaded* (ſaith he) *is one conſtant deſign of Satan, in the variety of wayes in Religion he hath ſet on foot by Jeſuits among us. Let us therefore be the more aware of whatever tends that way.*

Even Dr. *Owen*, who in his Diſcourſe of the work of the Spirit in Prayer, writes againſt the making or compoſing of Forms of Prayer for our ſelves to be uſed privately, deſires the Reader, p. 220. to obſerve that he *doth not argue againſt Forms of Prayer as unlawful to be uſed*; and, p. 222. he grants, that *Men or Churches may agree upon a preſcribed Form by common conſent, as judging and avowing it beſt for their own Edification.*

Again, p. 228. "Whether they are ap-
"proved or disapproved of God, whether
"they are lawful or unlawful, we do not
"consider, but only whether they are for
"Spiritual benefit and advantage for the
"good of our own Souls, and the Edi-
"fication of others, as set up in com-
"petition with the Gift before described.
So that it seems the Dr. doth not judge such Forms of Prayer unlawful which are for the good of our own Souls, and the Edification of others, and which are not in competition with the Gift before described.

"And therefore (p. 231, and 232.) sup-
"posing that those who make use of, and
"plead for Forms of Prayer, especially in
"publick, do in a due manner prepare them-
"selves for it by holy meditation, with an
"endeavour to bring their Souls into a ho-
"ly

"ly frame of fear, delight and reverence
"of God; let it alſo be ſuppoſed that they
"have a good end and deſign in the Wor-
"ſhip they addreſs themſelves unto, namely
"the Glory of God, and their own Spiri-
"tual advantage; the Prayers themſelves,
"though they ſhould be in ſome things ir-
"regular, may give occaſion to exerciſe
"thoſe acts of Grace which they were o-
"therwiſe prepared for: And I ſay yet further,
"that whilſt theſe Forms of Prayer are
"cloathed with the general notions of
"Prayer, that is, are eſteemed as ſuch in the
"minds of them that uſe them, are ac-
"companied in their uſe with the mo-
"tives and ends of Prayer, expreſs no mat-
"ter unlawful to be inſiſted on in Prayer,
"directing the Souls of Men to none but
"lawful Objects of Divine Worſhip and
"Prayer, the Father, Son, and Holy Spirit;
"and whilſt men make uſe of them with
"the true deſign of Prayer, looking after
due

" due assistance unto Prayer, I do not judge
" there is any such evil in them, as that God will
" not Communicate his Spirit to any in the
" use of them, so as that they should have
" no holy Communion with him in and
" under them. Much less will I say, that God
" never therein regards their Persons, or re-
" jects their praying as unlawful: For the
" Persons and Duties of Men may be ac-
" cepted with God, when they walk and act
" in sincerity according to their light, though
" in many things, and those of no small
" importance, sundry irregularities are found
" both in what they do, and in the man-
" ner of doing it. Where Persons walk be-
" fore God in their Integrity, and practise
" nothing contrary to their light and con-
" viction in his Worship, God is merciful
" unto them, although they order not e-
" very thing according to the Rule and
" Measure of the Word. So was it with them
" who came to the Passover in the days of

" *Heze-*

" *Hezekiah, they had not cleanſed themſelves,*
" *but did eat the Paſſover otherwiſe than it was*
" *written.* 2 Chron. 30. 18.

And, p. 235. He grants that ſuch Forms of Prayer *have not any intrinſical evil in the compoſition of them*; but argues againſt the *ſetting up* and preſcribing ſuch *Forms of Prayer* Univerſally, *in oppoſition, and unto the excluſion of free Prayer.*

And, p. 236. " If they appear not con-
" trary unto, or inconſiſtent with, or are not
" uſed in a way excluſive of that work of
" the Holy Spirit in Prayer which we have
" deſcribed from the Scripture, nor are re-
" ducible to any divine prohibition, I ſhall
" not contend with any about them.

Mr. *Baxters* Cure of Church-diviſions, I recommend to the reading of ſuch as lie under the temptation of unwarrantable Separation,

paration, as alſo Mr. *Ball* of that Subject at large. The whole of them is ſo uſeful, that I do not think fit to Tranſcribe any thing of either of them: But I will give you a little of what Mr. *Baxter* hath written, not only as his own judgment, but other Miniſters of his converſe and acquaintance, in his *Second Plea for Peace*, ſhewing what *Non-conformity* is not.

Page 100. "We are far from condemning all Forms of Prayer and publick Liturgies as unlawful, of which we have His Majeſties Teſtimony in his *Declaration* about *Eccleſiaſtical Affairs*, much more are we far from condemning all the Ancient and preſent Churches of Chriſt that have uſed ſuch, or yet uſe them, throughout the Chriſtian World; and yet further are we from Separating from them on that account (for uſing Liturgies) and from encouraging ſuch a Separation.

And

And, *p.* 101. We think it not unlawful to uſe as much of the *Engliſh* Liturgy as we conſented to uſe, when by His Majeſties Commiſſion ſome of us treated about the Reformation or Alteration of it, *viz.* in ſuch Aſſemblies where the Peoples incapacity maketh not ſuch uſe of it more hurtful then helpful to their Edification. And we joyn with Mr. *Ball*, and others of the old *Non-conformiſts*, in thanking God that *England* hath a more reformed Liturgy than moſt of the Churches in the World. We are far from judging the Pariſh-Miniſters to be no true Miniſters of Chriſt, or the Pariſh-Churches no true Churches, or judging it unlawful to hold Communion with them.

Mr. *Corbett*, in his *Account of the Principles and Practiſes of the* Non-conformiſts, Page 4. ſaith, We acknowledge the lawfulneſs of a Set Form of Liturgy, for mat-

ter agreeable to Gods Word, and ſuited to the nature of the ſeveral Ordinances, and to the neceſſities of the Church. Yet the Miniſter ſhould not be ſo confined to it, as not to make uſe of his own Gifts of Prayer and Exhortation.

Page 8. Moreover we hold not our ſelves obliged to forſake a true Church, as no Church, for the corruptions and diſorders found therein; or to Separate from its Worſhip, for the tolerable fauls thereof, while our perſonal profeſſion of ſome Errour, or Practice of ſome Evil, is not required as the Terms of our Communinion. Howbeit we are not ſo indifferent in this matter, as to make no difference between Churches, and Paſtors: The more pure and powerful Adminiſtration of Gods Ordinances, is to be preferred before that which is more faulty and leſs effectual: And here again we acknowledge, that in this preference due caution muſt be uſed: We muſt not reſpect our own

own particular benefit, before publick Peace and Order, and the general good.

Page 9. It is our Principle, That Humane Laws bind the Conſcience, or (to ſpeak more properly) the Subjects in point of Conſcience, not by a primary Obligation, as the Laws of God do, but by a ſecondary and ſubordinate, as from a power derived from God. As it is an evident and important Truth, That Inferiours ought to obey their Superiours for Conſcience ſake; ſo it is as evident and important, That when Mens Commands contradict the Commands of God, it is God and not Man that muſt have the prehemineence in our Obedience.

Page 21. We renounce not Communion in the publick Worſhip of the Pariſh-Churches, though for its outward Form and Order, in ſome reſpects, it be not that which is moſt deſirable by us.

Page 26. We have not forſaken the Parochial Aſſemblies, but have joyned in the

Service of God there performed, and ſome of us do it in our ordinary courſe, and others of us have not declined it of ſet purpoſe, but as our abſence is cauſed by that neceſſary Work of the Miniſtry, whereunto we are called: Some of us have Communicated with the ſaid Aſſemblies in the Sacrament of the Lords Supper: Yet we would not have our Charity and Peaceableneſs miſtaken for an indifferency unto Communion with all Parochial Churches and Miniſters whatſoever, or for a full ſatisfaction or acquieſcence in the whole, and all particulars of the Liturgy, ſo as to be able to declare our unfeigned Aſſent and Conſent to all and every thing therein contained.

Page 30. Whereas a remarkable Writer hath publiſhed theſe words, (*We ſhould be reconciled, if the* Presbyterian *Miniſters would perſwade their People to do what they can do themſelves.*) We declare to the World that we

we heartily embrace these Terms of Reconciliation; and as we have done already, we will not cease to do our uttermost to perswade them, upon whom we have any influence; and we would gladly come to the Tryal, to see which Party should outvie the other in forwardness in allaying the present Distempers, and lessening the Differences, and drawing on towards Peace and Union. We have here done our part to remove the Offences taken at us, by testifying to all *Men*, that conscientious dissatisfaction, and not Carnal Interest, or a Spirit of opposition, is the ground of our Non-conformity: And to bring such as differ from us to be in more Charity with us, than to judge that we are utterly unworthy or uncapable of the publick Ministry, or that such Persons as for ignorance and lewdness are scandalous and contemptible among their Neighbours, are more tolerable in Sacred Office than we are, or that

gross

groſs Inſufficiency, Non-reſidence, and other hanious negligence, ſhould be made leſs Criminal than our diſſent about the Ceremonies, Subſcriptions, Renunciations, and ſuch like Injunctions. We ſubmit what we have done to the Wiſdom, Piety, and Clemency of our Governours; we acquieſce in Gods Wiſe and Holy Determinations concerning us: And we reſolve through his Grace to abide ſtedfaſt and unmoveable in our Subjection and Loyalty to our Sovereign, in our due Obedience to thoſe that are put in Authority under him, in our earneſt endeavour of Holineſs, Unity, and Peace in the Church, in Brotherly love to all Faithful Chriſtians, in Charity to all men, and in the Faith and Patience of the Diſciples and Servants of Jeſus Chriſt.

I will only add his Senſe of the *Oxford Oath*, which I heartily ſubſcribe to, *p.* 11. When the higher Powers command what God forbids, though we are bound not to perform it, yet we muſt be ſubject, and not reſiſt, but patiently

patiently ſubmit to Suffering. The Cauſe of Religion doth not warrant Subjects to take Arms againſt their lawful Prince, nor may they by armed Violence againſt Authority, attempt the publick Reformation thereof. We hold, that it is unlawful, by the Conſtitutions and Laws of this Kingdom, for any Subjects to take Arms againſt the King, his Office, Authority, or Perſon, or by force of Arms to reſiſt any Magiſtrate or Officer legally Commiſſionated or Authorized by him; yea, Subjects are bound not only not to reſiſt, but to aſſiſt and defend their Sovereign with their Eſtates, and Lives; and the Preachers of the Goſpel ought to teach the People Obedience and Loyalty, and to endeavour to root out all Principles of Sedition, Rebellion, and Diſobedience. We believe that we are under no Bond or Obligation to act any thing contrary to theſe our avowed Principles. And we further make known our deteſtation of all the Indignity

and

and Violence offered to the Perſon of our late Sovereign, and eſpecially that moſt horrid execrable Fact of taking away his Life, as alſo the Uſurpations and violent change of the Goverment that did accompany the ſame, againſt which Crimes, while they were carried on, the Brethren of our Perſwaſion openly proteſted, even to the Faces of the Actors.

And. *p.* 14. We declare, That we will not endeavour any alteration of the Government in Church or State, as it is in the King, whoſe Civil and Eccleſiaſtical Supremacy we have before acknowledged; nor the alteration of the true Epiſcopal Office which Chriſt hath ſettled in his Church; nor will we endeavour any alteration in the Church, by any Seditious or unlawful means, but only by Prayer to God, by humbly petitioning our Superiours, or obeying the King if he Command it, or ſuch like lawful means as belong to us in our Places and Callings.

If

If the names of *Ball*, *Baxter* and *Corbet*, ſound harſh with ſome of you, methinks however the names of *Tombs*, *Nye* and *Owen*, ſhould make a greater figure among you, and be of greater Authority with ſuch as have not patience to hear the *Name*, much leſs the *Thing* called *Com-Prayer*.

If at the mouth of two or three witneſſes the matter ſhall be eſtabliſhed, *Deut.* 19. 15. Here is the teſtimony of three of your *own*, as well as three more of the *other* ſide, againſt ſuch as refuſe Communion, with ſuch Miniſters and Churches who do much more than I have done.

Will you not hear Mr. *Nye* telling you your duty, That *you and your Families ſhould frequent the publick Miniſtry*, That *you are obliged to obſerve the lawful Commands of your Governours*, That this principle, *That it is unlawful to hear in publick, is a miſperſuaſion of theſe latter times ſet on foot by the Jeſuits?* Will you not hear Dr. *Owen* telling you that he doth not *argue againſt* forms of Prayer as unlawful to be uſed; That, *whilſt you make uſe of them with the true deſign of Prayer, looking after due aſſiſtance unto Prayer, he doth not jude there is any ſuch evil in them, as that God will not Communicate his Spirit to any in the uſe of them*, &c. Will you let me add one more paſſage in his Preface? *I do not ſay the fatal Conſequence of the introduction of human deviſed ſet forms of Prayer in the worſhip of the Church, by the horrible abuſe of it, is ſufficient to condemn them as abſolutely unlawful.* Will you have no regard to the Miniſters of all perſuaſions, who tell you by their principles and practices the lawfulneſs

of what I do? Behold a greater than Dr. *Owen*, *&c.* is here, the *Apoſtle* of the *Gentiles*, great Saint *Paul*, telling you, that unto the *Jews* he became as a *Jew* that he might gain the *Jews*, *&c.* To the weak he became as weak that he might gain the weak: I am made all things ſaith he, to all men, that I might by all means ſave ſome, 1 *Cor.* 9. 20. *&c.* And he was ſo zealous for the ſaving of Souls that he could condeſcend to any thing that might be done with a good Conſcience. His own practice was the beſt comment on this Text, in taking *Timothy* to him as his Aſſiſtant or fellow-labourer in the Goſpel, and *Circumciſing him becauſe of the* Jews *that were in thoſe quarters, for they knew all that his Father was a* Greek, Acts 16. 3. Here is a piece of condeſcention indeed; a far greater piece of Conformity than the reading of a form of Prayer. *Timothy* had the repute of a *Gentile*, but becomes a *Jew*, that he might gain the *Jews*: And *Paul* chooſeth to make uſe of him as his partner in his Miniſtry, that his Preaching might be the more acceptable to the *Jews* in thoſe quarters. See alſo the advice of *James* and the other Elders to *Paul*, Acts 21. 18. *&c.* when he came to *Jeruſalem*. *Thou ſeeſt Brother how many thouſands of* Jews *there are which believe, and they are all zealous of the Law*, ver. 20. *and they are informed of thee that thou teacheſt all the* Jews *which are among the* Gentiles *to forſake* Moſes, *ſaying that they ought not to Circumciſe their Children*, &c. *Do therefore this that we ſay to thee: We have four Men which have a vow on them; them take, and puriſie thy ſelf with them, that they may ſhave their heads, and all may know that thoſe things whereof they were informed concerning thee*

thee are nothing, but that thou thy ſelf walkeſt orderly, and keepeſt the Law, ver. 24. *&c.* And ſhould not I and other Miniſters walk as we have *Paul* for our example? Give me leave to apply this piece of Conformity in him to our preſent caſe. You ſee how many thouſands in this Pariſh and many others are as zealous for Common-Prayer (as ſome very few are zealous againſt it) and they are miſinformed that *I* and other Nonconformiſts teach the people Rebellion, and that we inſtill into them the principles of Schiſm, and draw them away from the Publick Miniſtry and Ordinances; Therefore that we may convince gainſayers that theſe things whereof the people are informed againſt us are nothing, but that we alſo walk orderly and keep the Law, I have thought fit to do what I have done in obedience to the Law of the Land, that hereby I may be inſtrumental of gaining ſome Souls to Chriſt of theſe many thouſands that are ready to Periſh for lack of knowledge. Remember Mr. *Nyes* words, that *we are to walk wiſely yea, mercifully towards them that are without.*

Object. If theſe be your Principles that it is lawful to read and hear Common Prayer, why did you not do it at firſt and conform as the reſt of the Miniſters in the Pariſh Churches?

Anſw. I have told you already, if that only had been required of us, we had done it; but other things being required which we account ſinful, we rather choſe the pleaſing of God and the peace of our Conſciences in a way of duty, than honours and preferments from men in a way of ſin.

Object. If the Common-Prayer be read at your meet-

ing-place, we will rather go to the Pariſh Church and hear it there.

Anſw. If you think you have not enough of it with us, you may go to Church and have more: But if you account what I read too much, you argue perverſly in talking of going to them who do more than I have done. But I anſwer further, I have not, I will not in the leaſt diſcourage your going to the Publick Aſſemblies. The ſame Goſpel is Preached with them as with us, and with ſome of them, I doubt not, more judiciouſly, and perhaps more profitably than by ſuch as I, and whether may be more proſperous this or that we know not: So be it Chriſt be Preached here or there, we rejoyce and will rejoyce.

Again, our Aſſemblies are not ſet up in oppoſition to, but in conjunction with, or in ſubordination to thoſe in Publick; and therefore to ſuch as charge us with ſetting up Altars and Churches in a way of Rebellion againſt the Government, and to turn away the people from following the Lord in the way of his Worſhip in the Pariſh Churches, I anſwer as the Tribes of the Children of *Ruben* and the Children of *Gad* and half Tribe of *Manaſſeth* anſwered and ſaid (upon a like occaſion) unto the heads of the thouſands of *Iſrael* *Joſh.* 22. *The Lord God of Gods, The Lord God of Gods he knoweth and* Iſrael *he ſhall know, if it be in Rebellion or in tranſgreſſion againſt the Lord —— let the Lord himſelf require it: And if we have not rather done it for fear of this thing, ſaying, in time to come your Children might ſay unto our Children, ſaying, what have you to do with the Lord God of* Iſrael? Our Governours have made the Act of Uniformity, a Border

Border, a Wall of Separation between us and the Conformists, who are ready to say, ye have no part with us in the Ministerial work or in the Parish Assemblies for the Worship of God; If therefore we may not keep up our own *Meetings*, when we may not have liberty to Preach in the *Churches*, they shall make us to *Cease from fearing the Lord.*

And again I answer, The Harvest is great, the Laborers few, and Souls are precious; Go therefore where you will, it shall not offend, but please me, if the Net of the Gospel may be spread, and bring you into Christ by their Ministry or ours. But take heed of this dividing principle which some I see are acted by, of forsaking the Ministry and Ordinances of Christ, and the Communion of Saints, as soon as a form of prayer is used in any part of their worship: If God accept such worship and worshippers, (as no doubt but he doth where they lift up holy hands with pure hearts to him) he will not be very well pleased with such as reject them: And let me intreat you to consider whether this dividing principle will lead you: As soon as our Governours shall be pleased to open the Church-doors a little wider, and the Non-Conformists shall generally do the same thing that now I have done, you will then either repent of your Error, or if you persist in it, you will forsake their Assemblies also, as soon as a Form of Prayer (according to your fancy) hath polluted them, and then I dread to think where I may quickly find you. Either among the deluded Quakers, to cast off all Ministers and Ordinances; or among the Papists or Atheists, (of the *Roman* Religion or no Religion, for they are much alike)

and ſo to lay aſide the common principles of Morality, and act contrary to the very light of Nature as well as Scripture. But I hope better things of you (whom eſpecially and particularly I write this to) even things that accompany Salvation: And therefore as a means for that end I warn you, yea, in the words of the Apoſtle, Rom. 16. 17. 18. *I beſeech you Brethren, mark them which cauſe diviſions and offences contrary to the Doctrine which ye have learned, and avoid them; for they that are ſuch, ſerve not our Lord Jeſus Chriſt, but their own belly, and by good words and fair ſpeeches deceive the hearts of the ſimple.*

What may be the reſult of this leading example, God only knows, and time muſt diſcover: Be it what it will, I am not much concern'd, *having I truſt a good Conſcience* (in this matter,) *in all things willingly to live honeſtly.* Duty is our part, the Iſſues or Events of things belong unto God: But ſomething apepars above board already.

On the one ſide the wrathful and prophane, finding me out of the reach of the Conventicle Act, that they cannot hurt me, no nor hinder my work that way, have this laſt week put me into the Biſhops Court; from whom nothing leſs than *Excommunication*, yea, and a Goal, if poſſible, can be expected. Though we yeild as far as we can in things lawful, there is no Union, no Peace nor agreement to be had with ſuch men.

On the other ſide, there are ſome among our ſelves of dividing and unpeaceable Principles and Spirits; who ſeem to be ſo incurably prejudiced as to reſolve they *will have no Communion with ſuch Miniſters or Churches*, who in ſome little things croſs their humour, and do there-

fore

fore begin to *excommunicate themſelves*, before they have ſo much as heard what is to be ſaid in the Caſe. Theſe are people, who are *wiſer in their own conceit then ſeven men that can render a Reaſon.* I have given you the names of ſix already (*Nye, Owen, Tombs, Ball, Baxter*, and *Corbet*) I will add a ſeventh, Dr. *Thomas Goodwin* (*one among the firſt three* of the Independents) who in his Works lately printed in Folio on the *Epheſians Serm. 36. pag.* 488. hath theſe words. 'Whereas now 'in ſome of the Pariſhes of this Kingdom there are ma- 'ny godly men, that do conſtantly give themſelves up 'to the worſhip of God, and meet together in one place 'to that end, in a conſtant way, under a godly Miniſter, 'whom they themſelves have choſen to cleave to (though 'they did not chooſe him at firſt,) Theſe, notwithſtand- 'their mixture and want of diſcipline, I never thought 'for my part, but that they were true Churches of 'Chriſt. *Again, pag.* 489. So that I profeſs my ſelf as 'zealous in this point, as in any other I know: And for 'my part this I ſay, and I ſay it with much integrity, I 'never took up Religion by Parties in the lump: I have 'found by trial of all things, that there is ſome Truth on 'all ſides; I have found holineſs, where you would lit- 'tle think it, and ſo likewiſe Truth: And I have lear- 'ned this principle, which, I hope, I ſhall never lay down 'till I am ſwallowed up in immortality, and that is, to 'acknowledge every good thing, and hold communion 'with it in men, in Churches or whatſoever elſe. My Bre- 'thren, This Rule (which I profeſs I have lived by and 'ſhall do while I live) I know I ſhall never pleaſe men in: 'For this is the Nature and condition of all Mankind; if

'a